

§ 4022.26

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(d) *Multiple benefit increases.* In applying the formula contained in paragraph (b) of this section, multiple benefit increases within any 12-month period ending on or before the termination date and calculated from that date are aggregated and treated as one benefit increase.

(e) Notwithstanding the provisions of paragraph (b) of this section, a benefit increase described in paragraph (a) of this section shall be guaranteed only if PBGC determines that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by PBGC.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16956, Apr. 8, 2002]

EFFECTIVE DATE NOTE: At 76 FR 34603, June 14, 2011, § 4022.25 was amended by adding paragraph (f), effective July 14, 2011. For the convenience of the user, the added text is set forth as follows:

§ 4022.25 Five-year phase-in of benefit guarantee for participants other than substantial owners.

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(f) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “termination date” each place that “termination date” appears in paragraphs (c) and (d) of this section. Example: A plan amendment that was adopted and effective in February 2007 increased a participant’s benefit by \$300 per month (as computed under § 4022.24). The contributing sponsor of the plan filed a bankruptcy petition in March 2009 and the plan has a termination date in April 2010. PBGC’s guarantee of the participant’s benefit increase is limited to \$120 ($\$300 \times 40\%$), because the increase was made more than 2 years but less than 3 years before the bankruptcy filing date.

§ 4022.26 Phase-in of benefit guarantee for participants who are substantial owners.

(a) *Scope.* This section shall apply to the guarantee of all benefits described in subpart A (subject to the limitations in § 4022.21) with respect to participants who are substantial owners at the termination date or who were substantial owners at any time within the 5-year period preceding that date.

(b) *Phase-in formula when there have been no benefit increases.* Benefits pro-

vided by a plan under which there has been no benefit increase, other than the adoption of the plan, shall be guaranteed to the extent provided in the following formula: The monthly amount computed under § 4022.22 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the termination date that the substantial owner was an active participant under the plan, and the denominator of which is 30. Active participation under a plan commences at the later of the date on which the plan is adopted or becomes effective.

(c) *Phase-in formula when there have been benefit increases.* If there has been a benefit increase under the plan, other than the adoption of the plan, benefits provided by each such increase shall be guaranteed to the extent provided in the following formula: The amount of the guaranteeable benefit increase computed under § 4022.24 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the termination date that the benefit increase was in effect and during which the substantial owner was an active participant under the plan, and the denominator of which is 30. However, in no event shall the total benefits guaranteed under all such benefit increases exceed the benefits which are guaranteed under paragraph (b) of this section with respect to a plan described therein.

(d) For the purpose of computing the benefits guaranteed under this section, in the case of a substantial owner who becomes an active participant under a plan after a benefit increase (other than the adoption of the plan) has been put into effect, the plan as it exists at the time he commences his participation shall be deemed to be the original plan with respect to him.

[61 FR 34028, July 1, 1996, as amended at 62 FR 67729, Dec. 30, 1997]

§ 4022.27 Effect of tax disqualification.

(a) *General rule.* Except as provided in paragraph (b) of this section, benefits accrued under a plan after the date on which the Secretary of the Treasury or his delegate issues a notice that any trust which is part of the plan no longer meets the requirements of section 401(a) of the Code or that the plan

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no longer meets the requirements of section 404(a) of the Code or after the date of adoption of a plan amendment that causes the issuance of such a notice shall not be guaranteed under this part.

(b) *Exceptions.* The restriction on the guarantee of benefits set forth in paragraph (a) of this section shall not apply if:

(1) The Secretary of the Treasury or his delegate issues a notice stating that the original notice referred to in paragraph (a) of this section was erroneous;

(2) The Secretary of the Treasury or his delegate finds that, subsequent to the issuance of the notice referred to in paragraph (a) of this section, appropriate action has been taken with respect to the trust or plan to cause it to meet the requirements of sections 401(a) or 404(a)(2) of the Code, respectively, and issues a subsequent notice stating that the trust or plan meets such requirements; or

(3) The plan amendment is revoked retroactively to its original effective date.

Subpart C—Calculation and Payment of Unfunded Non-guaranteed Benefits [Reserved][Link to an amendment published at 76 FR 34603, June 14, 2011.](#)

EFFECTIVE DATE NOTE: At 76 FR 34603, June 14, 2011, the heading for subpart C was revised to read “Section 4022(c) Benefits”, effective July 14, 2011.

§ 4022.51 Determination of section 4022(c) benefits in a PPA 2006 bankruptcy termination.

(a) *Amount of unfunded nonguaranteed benefits.* For purposes of this section, and subject to paragraph (b) of this section, a plan’s amount of unfunded nonguaranteed benefits means the plan’s outstanding amount of benefit liabilities, as defined in section 4001(a)(19) of ERISA, determined as of the plan’s termination date. A plan’s amount of unfunded nonguaranteed benefits is multiplied by the applicable recovery ratio to determine the aggregate amount to be allocated with respect to partici-

pants of the plan under section 4022(c)(1) of ERISA.

(b) *Benefits included in unfunded non-guaranteed benefits.* For purposes of computing benefits under section 4022(c) of ERISA in a PPA 2006 bankruptcy termination, unfunded non-guaranteed benefits are benefits under a plan as of the plan’s termination date that are neither guaranteed by PBGC (taking into account section 4022(g) of ERISA) nor funded by the plan’s assets (taking into account section 4044(e) of ERISA).

(c) *Determination of recovery ratio.* In a PPA 2006 bankruptcy termination, the recovery ratio under section 4022(c)(3) of ERISA is determined as follows. The numerator is based on PBGC’s recoveries under section 4062, 4063, or 4064, valued as of the plan’s (or plans’) termination date (or dates). The denominator of the recovery ratio is based on the amount of unfunded benefit liabilities, as defined in section 4001(a)(18) of ERISA, as of the plan’s (or plans’) termination date (or dates).

[76 FR 34603, June 14, 2011]

EFFECTIVE DATE NOTE: At 76 FR 34603, June 14, 2011, § 4022.51 was added, effective July 14, 2011.

Subpart D—Benefit Reductions in Terminating Plans

§ 4022.61 Limitations on benefit payments by plan administrator.

(a) *General.* When § 4041.42 of this chapter requires a plan administrator to reduce benefits, the plan administrator shall limit benefit payments in accordance with this section.

(b) *Accrued benefit at normal retirement.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant that exceeds the participant’s accrued benefit payable at normal retirement age under the plan. For the purpose of applying this limitation, post-retirement benefit increases, such as cost-of-living adjustments, are not considered to increase a participant’s benefit beyond his or her accrued benefit payable at normal retirement age.